IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal RevisionNo.765 of 2002
Date of Decision : January 19, 2010

Major Singh

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. K.S. Kahlon, Advocate for
Mr. D.S. Pheruman, Advocate.

Ms. Shalini Attri, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

By way of the present revision filed under Section 401 Cr.P.C., the petitioner has challenged his conviction and sentence for offences under Sections 279 and 304-A IPC.

According to the prosecution, on 3.1.1995 at about 3.00 P.M., Chander, since deceased, who was a retired Railways employee, alongwith his son Om Parkash, was going from Bus Stand, Sirsa towards his house while moving on the correct side of the road. In the meantime, a bus of Punjab Roadways bearing registration No.PB-12-A-9937 driven by the petitioner in a rash and negligent manner came from behind and hit Chander. On account of the impact, Chander fell down

and sustained injuries on the right foot and stomach. The injured was removed to General Hospital, Sirsa where his statement Ex.PE was recorded on 4.1.1995 and on its basis FIR No.4 dated 4.1.1995 was registered at Police Station City, Sirsa under Sections 279 and 337 IPC. The injured, however, died on 11.2.1995 and consequently, offence under Section 304-A IPC was added to the FIR.

After completion of the investigation and presentation of the challan, the petitioner was tried for offences under Sections 279 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Sham Singh, Mechanic, Haryana Roadways, Sirsa, PW2 Om Parkash, son of the deceased, PW3 ASI Ram Chander, who investigated the case, PW4 Dr.R.K. Bishnoi, who radiologically examined injured-Chander on 4.1.1995, PW5 Inspector Gurmeet Singh, who prepared report under Section 173 Cr.P.C., PW6 SI Daya Nand, who recorded formal FIR Ex.PW6/A, PW7 Suresh, another son of the deceased, who identified his dead body at the time of postmortem examination, PW8 Dr. Dharmender Singh, who medico-legally examined Chander, PW9 Dr. Joginder Singh, who conducted postmortem examination on the dead body of Chander on 11.2.1995, PW10 C.Azad Singh, who remained associated with the Investigating Officer during the investigation of the case and PW11 Bakhtawar Singh, a retired employee of Punjab Roadways, Ferozepur,

who proved the relevant duty roster of 3.1.1995.

When examined under Section 313 Cr.P.C., the petitioner denied the prosecution version in its entirety and pleaded his false implication. However, he did not examine any evidence in defence.

Vide judgment and order dated 10.11.2001, learned Judicial Magistrate 1st Class, Sirsa held that the prosecution had successfully proved its case against the petitioner beyond reasonable shadow of doubt. Accordingly, the petitioner was held guilty under Section 279 IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further imprisonment for a period of one month. He was also convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for a period two years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further imprisonment for a period of three months. The sentences were ordered to run concurrently. The amount of fine imposed upon the petitioner was paid by him.

Aggrieved of his conviction and sentence, the petitioner filed an appeal but the same was dismissed by learned Sessions Judge, Sirsa on 11.4.2002 by upholding the conviction of the petitioner for the aforementioned offences but reducing the sentence of rigorous imprisonment for offence under Section 279 IPC from a period of six months to rigorous imprisonment for a period of three months and for

offence under Section 304-A IPC by reducing the sentence of rigorous imprisonment from two years to rigorous imprisonment for one year. The amount of fine imposed by the trial Court on both the counts, alongwith its default clause, was maintained. Both the substantive sentences were ordered to run concurrently. Hence, the present revision.

Learned counsel for the petitioner has submitted that the prosecution case regarding ocular account is based upon the sole testimony of PW2 Om Parkash. There is no corroboration to his statement so as to hold that the petitioner was driving the bus in question in a rash and negligent manner at the time of the accident.

Though during the trial of the case, the prosecution examined PW2 Om Parkash in support of the ocular account yet it also relied upon the statement Ex.PE made by Chander, since deceased, before his death which was recorded by PW3 ASI Ram Chander. Said statement after the death of its maker assumed the nature of a dying declaration as it related to the circumstances of the transaction which resulted in his death. The said dying declaration stands corroborated by the testimony of PW2 Om Parkash.

It is further submitted by learned counsel for the petitioner that the death of Chander was not on account of the injuries received by him at the time of accident but on account of subsequent medical negligence.

The occurrence had taken place on 3.1.1995 whereas Chander died on 11.2.1995. It is clear from the testimony of PW9 Dr. Joginder Singh that he conducted postmortem examination on the dead body of Chander on 11.2.1995. He found a dressed wound present on the right lower leg and right foot with external fixator with pins. On undressing the wound which was partially healed, it extended over to the right foot of size 30 cm x 10 cm. Crests were present at places. Skin was lost at places. There was swelling present on right foot. Pus was also found present at some places. On dissection poorly healed laceration of the muscles was found present. There was a comminuted fracture on right leg bones and lower end and upper right fibula and right tarsal bones of foot. In his opinion the cause of death in this case was complications of injuries already described which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The defence did not opt to cross examine PW9 Dr. Joginder Singh. Under these circumstances, his opinion that injuries found on the deceased were ante-mortem in nature and sufficient to cause death in ordinary course of nature has to be accepted as such and to rule out that the death was on account of some medical negligence.

Learned counsel for the petitioner also submitted that the FIR was lodged after a delay of about 24 hours which casts doubt on the veracity of the prosecution case.

As is apparent from the record, the accident in question had taken place at about 3.00 P.M. on 3.1.1995. Immediately, after the accident, the injured was removed to General Hospital, Sirsa where he was medico-legally examined on the same day at 3.10 P.M. Ruqa Ex.PC was then sent to SHO, Police Station City, Sirsa pursuant to which ASI Ram Chander submitted an application Ex.PD before Medical Officer to find out as to whether the injured was fit to make a statement or not. The doctor vide his endorsement Ex.PD/1 made on 3.1.1995 at 5.50 P.M. declared the injured unfit to make the statement. Once again, on 4.1.1995, the aforementioned application Ex.PD was produced before the doctor who made an endorsement PD/2 thereon at 11.00 A.M. and declared the injured fit to make a statement. It was only thereafter that statement Ex.PE of injured-Chander was recorded by ASI Ram Chander on 4.1.1995, who then made an endorsement Ex.PE/2 on the same day at 2.30 P.M. and sent the same to the Police Station for registration of a case. On the basis of the aforementioned statement of the injured, formal FIR came to be recorded in Police Station City, Sirsa on 4.1.1995 at 2.50 P.M. From the above, it is clear that the prosecution was able to give satisfactory explanation about the delay in lodging of the FIR.

Learned counsel for the petitioner further submitted that the petitioner is not a previous convict. He is a poor person and has a large family to support. Therefore, the petitioner be granted the relief of probation, instead of, being asked to serve the sentences of

imprisonment imposed upon him. In any case, the sentences of imprisonment awarded to the petitioner are on the higher side.

It was the prosecution case that at the time of the accident deceased-Chander was walking on foot and going towards his house from the bus stand. He was going on the left side of the road. However, the bus driven by the petitioner at a fast speed and without blowing any horn came from behind and hit him as a result of which he fell down. The front wheel of the bus passed over his left leg. The accident was caused by the petitioner while driving the vehicle in a rash and negligent manner. On account of the injuries received by him, injured Chander remained under treatment for more than a month but despite the same he could not survive. Ultimately on 11.2.1995, he died on account of complications of injuries which injuries were sufficient to cause death in ordinary course of nature. Therefore, no case is made out for extending the benefit of probation to the petitioner. However, keeping in view the fact that the accident had taken place more than 15 years earlier and the present revision has remained pending for about eight years, the Court is of the view that ends of justice would be amply met if the substantive sentence of rigorous imprisonment for a period of one year imposed upon the petitioner for the offence under Section 304-A IPC is reduced to nine months.

Resultantly, the conviction of the petitioner for the offences

under Sections 279 and 304-A IPC is maintained. His sentence of rigorous imprisonment for one year imposed under Section 304-A IPC is reduced to rigorous imprisonment for nine months. The sentence of rigorous imprisonment for three months awarded under Section 279 IPC is maintained. The sentences of fine imposed upon the petitioner on both the counts, alongwith their default clauses, are also maintained.

But for the modification in the quantum of sentence, as indicated above, the revision fails and is, therefore, dismissed.

(T.P.S. MANN)
JUDGE

January 19, 2010
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